

ORDINANCE NO. 23-461

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS OF THE TOWN CODE AND ADDING CHAPTER 5.28 CONCERNING LICENSING VACATION RENTALS AND SHORT-TERM RENTALS.

WHEREAS, local governments may regulate short-term rentals and vacation rentals ("vacation rentals") except as limited by Arizona Revised Statutes ("A.R.S.") § 9-500.39;

WHEREAS, the Town deems it necessary to adopt certain regulations regarding the use of a property as a vacation rental to protect the health, safety, and welfare of the Town residents;

WHEREAS, a central and significant goal for the Town is to protect the health, safety, and welfare of the Town residents, preserve its housing stock, and maintain the quality and character of residential neighborhoods;

WHEREAS, the Town will require all vacation rentals to register, obtain and maintain a valid Town short-term rental license, pay initial registration and annual license fees, provide an emergency point of contact to respond to compliance and emergencies in a timely manner, maintain insurance, provide neighbor notification, and disclose certain information about the vacation rental in each advertisement;

WHEREAS, the Town will require all short-term rentals to obtain and maintain a valid transaction privilege tax ("TPT") license number, provide proof of the TPT license to the Town, and require disclosure of the TPT number on each advertisement;

WHEREAS, the Town retains the right to change its fees after review and approval from Town Council;

WHEREAS, the Town deems it necessary to establish penalties and fines that apply to vacation rentals; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the Town of Pinetop-Lakeside, Arizona, as follows:

Section I. General.

Title 5 of the Code of Pinetop-Lakeside, Arizona, is hereby amended, adding Chapter 5.28, Short-term Rentals and Vacation Rentals, to read as follows:

ARTICLE 5.28. SHORT-TERM RENTALS AND VACATION RENTALS LICENSING

- Sec. 5.28.1 Purpose.
- Sec. 5.28.2 Definitions.
- Sec. 5.28.3 Permit Required; Penalties.
- Sec. 5.28.4 Emergency Point of Contact Requirements; Penalties.
- Sec. 5.28.5 Compliance with the Law; Prohibited Uses.
- Sec. 5.28.6 Neighbor Notification Required.
- Sec. 5.28.7 Advertisement Requirements.
- Sec. 5.28.8 Posting on the Property Required.
- Sec. 5.28.9 Insurance Required.
- Sec. 5.28.10 Permit Suspensions.
- Sec. 5.28.11 Enhanced Penalties.
- Sec. 5.28.12 Appeals.
- Sec. 5.28.13 Judicial Relief.
- Sec. 5.28.14 Severability.

Sec. 5.28.1 Purpose.

This Article is adopted to protect the health, safety, and welfare of the community of the Town of Pinetop-Lakeside by enacting reasonable regulations for short-term and vacation rentals. These regulations are in addition to other codes of the Town of Pinetop-Lakeside.

Sec. 5.28.2 Definitions.

In this Article, unless the context or definitions in A.R.S. § 9-500.39, as may be amended, indicate otherwise, the following terms or phrases are defined as follows:

"Short-term rental" and "vacation rental" are interchangeable for purposes of this Article and mean any individually or collectively owned single-family or one-to-four-family house or dwelling unit, or any unit or group of units in a condominium

or cooperative, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use. "Vacation rental" does not include the following:

(i) accommodations or property that is classified for property taxation under A.R.S. § 42-12001, as may be amended; or

(ii) any unit used for non-residential use, including a special event that would otherwise require a permit, retail, restaurant, banquet space, or other similar use.

"Advertisement" means any method of soliciting the use of the property for vacation rental purposes.

"Applicant" means the owner or owner's designee who applies with the Town of Pinetop-Lakeside for a permit or renewal of a permit.

"Days" shall mean calendar days unless stated otherwise.

"Designee" and "Agent" are interchangeable for purposes of this Article and mean any person or persons with the charge, care, or control of any property, dwelling unit, or portion thereof. "Designee" includes the "emergency point of contact."

"Emergency point of contact" means the owner or individual designated by the owner to: (i) serve as the local twenty-four (24) hour emergency point of contact for the vacation rental; and (ii) respond to complaints and emergencies relating to the vacation rental in a timely manner as required by this Article.

"Neighbor notification" means the written notice provided by the owner to each single-family residential property adjacent to the vacation rental property, directly across from the vacation rental property, and diagonally across the street of the vacation rental property that includes the valid permit number issued by the Town of Pinetop-Lakeside, the physical address of the vacation rental, and the name, address, and twenty-four (24) hour telephone number of the emergency point of contact.

"Non-residential use" means any use not permitted in a residential zoning district pursuant to a Town of Pinetop-Lakeside zoning ordinance. Non-residential use includes the following:

1. Any commercial, industrial, manufacturing, or another non-residential purpose;
- or
2. Operating a retail business, restaurant, event center, banquet center, or similar use; or
 3. Housing sex offenders; or
 4. Operating or maintaining a structured sober living home; or
 5. Selling liquor, controlled substances, or pornography; or
 6. Operating any adult-oriented business, including nude and topless dancing.

"Online Lodging Marketplace" has the same meaning prescribed in A.R.S. § 42-5076, as may be amended.

"Permit" means authorization by the Town of Pinetop-Lakeside to operate a vacation rental in accordance with this Article.

"Person" means an individual, public entity, firm, corporation, partnership, limited liability company, trust, association, or any other business entity or juridical person, whether operating on a for-profit or nonprofit basis.

"Transaction privilege tax license" is the license issued by the State of Arizona pursuant to A.R.S., Title 42.

"Transient" has the same meaning prescribed in A.R.S. § 42-5070, as may be amended.

"Owner" means any person who, alone or with others, has title or interest in a property, dwelling unit, or portion thereof, with or without accompanying actual possession thereof, and includes any person who, as an agent, executor, administrator, trustee, or guardian has charge, care, or control of any property, dwelling unit, or portion thereof.

"Timely manner" means responding to complaints and emergencies in person, by phone, or by email within 24 hours from the request by public safety personnel.

Sec. 5.28.3 Permit Required; Penalties.

(A) *Permit required.* Prior to the use of a property as a vacation rental, the owner shall obtain an annual vacation rental permit from the Town of Pinetop-Lakeside. Renting, or offering for rent, a vacation rental without complying with the permit requirement in this Section 5.28.3 is prohibited.

(B) *Permit applications.* The owner of a proposed vacation rental shall submit to the Town of Pinetop-Lakeside a permit application on a form furnished by the Town of Pinetop-Lakeside. The permit application shall be signed by the applicant and shall contain the following minimum information, which shall be made publicly available:

- (1) The physical address of the residential property proposed to be used as a vacation rental.
- (2) The name, address, and telephone number of the owner for which the vacation rental registration certificate is to be issued. If the property owner is an entity, the legal name of the entity and its statutory agent.
- (3) The name, address, and telephone number of each designee of the owner, if any.

(4) The full name, address, and twenty-four (24) hour telephone number of the individual who will serve as the emergency point of contact.

(5) Proof of a valid transaction privilege tax license.

(6) Acknowledgment by the owner of an agreement to comply with all applicable laws, regulations, and ordinances, including the requirement that the owner and each designee shall not be a registered sex offender, been convicted of any felony act that resulted in death or serious physical injury, or been convicted of any felony use of a deadly weapon within the past five years.

(7) Attestation of compliance with the notification required in this Article.

(8) Evidence of liability insurance appropriate to cover the vacation rental in the aggregate of at least \$500,000 or evidence that each vacation rental transaction will be provided through a platform that provides equal or greater primary liability insurance coverage for the vacation rental.

(C) *Permit fee.* Every application, including any renewal application, for a vacation rental permit under this Article shall be accompanied by a non-refundable fee established by Town Council resolution.

(D) *Issuance; reasons for the denial.* The Town of Pinetop-Lakeside shall issue or deny the permit within seven (7) business days after receipt of a complete application, except that the Town may deny issuance of a permit for any of the following reasons:

(1) The applicant failed to provide the information required under subsection B of this Section 5.28.3;

(2) The applicant failed to pay the permit fee required under subsection C of this Section 5.28.3;

(3) The applicant provided false information;

(4) The owner or designee of the owner: (i) is a registered sex offender; (ii) has been convicted of any felony act that resulted in death or serious physical injury; or (iii) has been convicted of any felony use of a deadly weapon within five (5) years of submitting the application; or

(5) At the time of application, the owner has a suspended permit for the same vacation rental.

(E) *Notice of denial; appeal.* The Community Development Director or designee shall give notice of the denial of an application to the applicant by mailing or emailing the notice to the applicant at the address listed on the application. The notice of the denial shall inform the applicant of the right to appeal the denial as provided for in Sec. 5.28.12.

(F) *Maintaining Accurate Information; Violations.* All applicants and persons holding permits issued pursuant to this Article shall give prior written notice to the Community Development Director or designee of any material change in the information submitted in connection with an application for a permit or renewal of a permit. The notice shall be provided to the Community Development Director not less than ten (10) days prior to the effective date of the change. Any information required for an application under this Section 5.28-3 is deemed to be material for purposes of Section 5.28-3. A violation of this subsection is a civil offense.

(G) *Term of Permit; Renewal application.* All permits issued under this Article shall be valid for a period of one (1) year from the date of their issuance / until suspended or revoked. Except where the Town of Pinetop-Lakeside has received a new application along with the requisite fees, it shall be unlawful for any person to operate a vacation rental after the expiration date recorded upon the face of the vacation rental permit.

(H) *Operating Without a Permit; Penalties.* A vacation rental that fails to apply for a permit or license within thirty (60) days of the permit application being made available by the Town of Pinetop-Lakeside shall immediately cease operations. In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, the Town of Pinetop-Lakeside shall impose a civil penalty of \$1,000 per month against the owner if the owner or owner's designee fails to apply for a permit within 30 days of receiving the written notice of violation from the Town of Pinetop-Lakeside. Representations or advertisements, including online listings that reference the property, house, or dwelling unit location within the Town of Pinetop-Lakeside, are prima facie evidence that a vacation rental is operating in the Town of Pinetop-Lakeside.

(I) *Non-transferable.* No permit shall be transferable either as to location or as to person.

(J) *Implementation.* The Town of Pinetop-Lakeside Community Development Director or designee shall develop the necessary forms and/or database necessary to implement this Section 5.28.3.

Sec. 5.28.4 Emergency Point of Contact Requirements; Penalties.

(A) *Emergency Responses; Violations.* When requested by a police officer, the owner or emergency point of contact whose name appears on the permit application must be on the vacation rental premises or be available over the phone or text within sixty (60) minutes of the request.

(B) *Non-emergency Responses; Violations.* The owner or emergency point of contact shall respond to all other complaints relating to the vacation rental in person, over the phone, by email, or by text within twenty-four (24) hours of the request.

(C) *Maintaining Accurate Emergency Information.* All applicants and persons holding permits issued pursuant to this Article shall give prior written notice to the Community Development Director or designee of any change to the contact information provided to

the Town of Pinetop-Lakeside for the emergency point of contact. The notice shall be provided to the Community Development Director not less than ten (10) days prior to the effective date of the change.

(D) *Violations*. In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, a violation of this Section shall be a civil offense.

(E) *Penalties*. In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, an owner shall be subject to civil penalties of up to \$1,000 for every thirty (30) days the owner fails to provide notice to the Town of Pinetop-Lakeside as required under this subsection. Before imposing the initial civil penalty, the Town of Pinetop-Lakeside shall provide thirty (30) days' notice to the owner by emailing or mailing a notice of violation to the owner's email address or mailing address that was provided to the Town of Pinetop-Lakeside. The notice of the violation shall inform the applicant of the right to appeal the denial as provided for in Sec. 5.28.12. Notwithstanding the date of the notice of violation, the date for calculating the penalties shall be the first day the vacation rental is occupied following the owner's failure to provide the notice to the Town of Pinetop-Lakeside regarding the change.

Sec. 5.28.5 Compliance with the Law; Prohibited Uses.

(A) A vacation rental shall comply with federal, state, and local laws, including laws relating to public health and safety, sanitation, solid waste, hazardous waste, tax privilege licensing, property tax registration, noise, property maintenance, and nuisance abatement.

(B) No person or entity shall operate a vacation rental in violation of this Article or other law. In addition, the use of a vacation rental property for any of the following uses or purposes is strictly prohibited:

- (1) Any non-residential use;
- (2) Holding a special event that requires a permit or license pursuant to a town ordinance or state law or rule;
- (3) Operating a retail business, restaurant, event center, banquet hall, or similar use;
- (4) Housing sex offenders;
- (5) Operating or maintaining a sober living home;
- (6) Selling liquor, illegal drugs, or pornography;
- (7) Operating a nude or topless dancing;
- (8) Obscenity;
- (9) Adult-oriented business; or

(10) Any other use prohibited by A.R.S. § 9-500.39, as may be amended, or the Town of Pinetop-Lakeside code.

(C) A vacation rental lacking a valid transaction privilege tax license issued by the State of Arizona shall not be rented or offered for rent.

(D) In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, any person who causes, allows, facilitates, aides, or abets any violation of this Article shall be subject to a civil offense.

(E) The failure of any designee to comply with this Article shall not relieve the owner of liability under this Article.

Sec. 5.28.6 Neighbor Notification Required.

(A) *Neighbor notification.* Prior to offering a vacation rental for rent for the first time, the owner or designee shall provide neighbor notification to each single-family residential property adjacent to the vacation rental property, directly across from the vacation rental property, and diagonally across the street of the vacation rental property. The neighbor notification shall be provided in writing in the form required by the Town of Pinetop-Lakeside and shall include the following minimum information:

- (1) The permit number issued by the Town of Pinetop-Lakeside;
- (2) The physical address of the vacation rental; and
- (3) The name, physical address, email address, and twenty-four (24) hour telephone number of the emergency point of contact.

(B) *Additional neighbor notification required.* Any change to the information provided under Subsection A shall require additional neighbor notification by the owner or designee not later than five (5) days prior to each change. The additional notice shall be provided in the manner required by subsection A of this Section 5.28.6

(C) *Attestation.* Prior to offering a vacation rental for the first time, the owner or designee shall provide to the Town of Pinetop-Lakeside an attestation of compliance with the neighbor notification required by Section 5.28.6.

(D) *Violations.* In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, a violation of this Section 5.28.6 shall be a civil offense.

Sec. 5.28.7 Advertisement Requirements.

(A) *Required Disclosure.* To protect the peace, health, safety, and general welfare of the Town's residents and visitors, the owner or owner's designee shall be responsible for

displaying the permit number issued by the Town on each advertisement for such vacation rental.

(B) *Violations.* In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, a violation of this Section shall be a civil offense. Each advertisement in violation of this Section 5.28.7 shall constitute a separate violation.

Sec. 5.28-8 Posting on the Property Required.

(A) *Posting at the Vacation Rental.* The owner of the vacation rental must display the permit number in a conspicuous place within 10 feet of the primary entrance visible from the exterior of the vacation rental. The notice must be completed in 14-point or larger bold font, on a laminated or otherwise similarly shielded paper, and prominently displayed.

(B) *Failure to Comply.* In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, a violation of this Section 5.28.8 shall be a civil offense. Each day a vacation rental does not display the information required by this Section 5.28.8 shall constitute a separate violation.

Sec. 5.28.9 Insurance Required.

(A) *Required insurance.* Prior to offering or renting a vacation rental for rent for the first time, liability insurance appropriate to cover the vacation rental in the aggregate of at least \$500,000 shall be provided by the owner or the online marketplace platform.

(B) *Proof of insurance.* Proof of the required liability insurance coverage shall be provided to the Town upon a request by the Town no later than 7 days prior to offering or renting the vacation rental for rent for the first time.

(C) *Violation.* In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, a violation of this Section 5.28.9 shall be a civil offense. Each day a vacation rental lacks the insurance required by this Section 5.28.9 shall constitute a separate violation.

Sec. 5.28.10 Permit Suspensions.

(A) *Permit suspensions.* The Town of Pinetop-Lakeside may initiate an administrative process to suspend a vacation rental permit for a period of up to twelve (12) months for any of the following:

(1) Three verified violations of this Article within a twelve (12) month period, not including any such violation based on aesthetics, solid waste disposal, or vehicle parking violation that is not also a serious threat to public health and safety.

(2) One verified violation that results in or constitutes any of the following:

(a) A felony offense committed at or in the vicinity of a vacation rental by the owner of the vacation rental or by the owner's designee;

(b) A serious physical injury or wrongful death at or related to a vacation rental resulting from the knowing, intentional, or reckless conduct of the owner of the vacation rental or the owner's designee;

(c) The owner of the vacation rental or the owner's designee knowingly or intentionally housing a sex offender, allowing offenses related to adult-oriented businesses, sexual offenses, or prostitution, or operating or maintaining a sober living home; or

(d) The owner of the vacation rental or the owner's designee knowingly or intentionally allowing the use of a vacation rental for a special event that would otherwise require a permit or license pursuant to the Town of Pinetop-Lakeside code or state law or rule or for a retail, restaurant, banquet space or other similar use.

(B) *Appeals.* A decision to suspend a permit may be appealed by the owner as set forth in Sec. 5.28.12.

Sec. 5.28.11 Enhanced Penalties.

(A) The remedies in this Article are cumulative, and the Town of Pinetop-Lakeside may proceed under one or more such remedies.

(B) In addition to any other penalty pursuant to the Town of Pinetop-Lakeside Code, and notwithstanding any other law, the Town of Pinetop-Lakeside may impose a civil penalty of the following amounts against an owner if the owner causes, allows, facilitates, aides, or abets a verified violation of any provision of this Article or fails to perform any act or duty required by this Article, related to the same vacation rental property within the same twelve-month period:

(1) Up to \$500 or up to an amount equal to one night's rent for the vacation rental as advertised, whichever is greater, for the first violation.

(2) Up to \$1,000 or up to an amount equal to two nights' rent for the vacation rental as advertised, whichever is greater, for the second violation.

(3) Up to \$3,500 or up to an amount equal to three nights' rent for the vacation rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a vacation rental, those violations are considered one violation for the purpose of assessing civil penalties.

(C) In addition to any other penalty pursuant to the Code, any property that operates as a vacation rental and fails to apply for a vacation rental permit in accordance with this Article within sixty (60) days of the application process being made available by the Town, must cease operations immediately. In addition to any fines imposed pursuant to this Section 5.28.11, the Town may impose a civil penalty of up to \$1,000 per month, against the owner if the owner or owner's designee fails to apply within thirty (30) days of receiving written notice of the failure to comply with this Article.

Sec. 5.28.12 Appeals.

(A) Any person aggrieved by any decision with respect to the denial of or a refusal to issue a vacation rental permit, the suspension of a vacation rental permit, or a penalty imposed pursuant to this Article may appeal the decision by filing a written notice of appeal with the Town of Pinetop-Lakeside Community Development Director no later than thirty (30) days from the date of the decision letter. The notice of appeal shall be on a form approved by the Town of Pinetop-Lakeside. Appeals shall be handled pursuant to Section 5.04.130 of the Town Code and any permit issued pursuant to this Article is deemed a license for the purposes of Section 5.04.130.

(B) An appeal under this Section 5.28.12 does not operate as a stay of the permit suspension.

(C) This Section 5.28.12 is not applicable to judicial actions brought pursuant to Sec. 5.28.13 or to penalties, including fines imposed by a court.

Sec. 5.28.13 Judicial relief.

(A) Notwithstanding Sec. 5.28.10, any attempted or completed felony act arising from the occupancy or use of a vacation rental that results in a death, or actual or attempted serious physical injury, shall be grounds for judicial relief in the form of a suspension of the property's use as a vacation rental for a period that shall not exceed twelve (12) months.

(B) The Town Attorney may initiate proceedings in the Town of Pinetop-Lakeside court or another court of competent jurisdiction to enforce this Section 5.28.13.

Sec. 5.28.14 Severability.

In the event any section or provision of this Article shall be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of this Article as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

PASSED AND ADOPTED by the Mayor and Town Council in an open meeting by the Town Council, Town of Pinetop-Lakeside, Arizona, this 16th day of March 2023, to be effective upon the expiration of a thirty (30) day period following adoption and publication pursuant to A.R.S. § 9-812 is complete.

TOWN OF PINETOP-LAKESIDE



Stephanie Irwin

Stephanie Irwin
Mayor

ATTEST:

APPROVED AS TO FORM:

Kristi Salskov
Kristi Salskov
Town Clerk

William Sims
William J. Sims, III
Town Attorney